ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]
SUPREME COURT OF ERRORS OF CONNECTICUT.[2]
SUPREME COURT OF ILLINOIS.[3]
COURT OF CHANCERY OF NEW JERSEY.[4]
SUPREME COURT COMMISSION OF OHIO.[5]

ACCOUNT.

Between Partners—Statute of Limitations—Laches.—To render the lapse of the statutory period a bar to an action for an account by one partner against another, it must appear that the account has been closed for six years: *Stout* v. *Executors of Seabrook*, 30 N. J. Eq.

Great delay is a good bar in equity. A decree requiring a copartner to account, should be denied in every case where it appears the party seeking the account, has, by his laches, rendered it impossible for the court to do full justice to both parties: *Id.*

If, in an action for an account, the court is satisfied nothing is due to the complainant from the defendant, a dismissal must be directed: *Id.*

ASSIGNMENT.

Form not regarded in Equity.—Any writing which clearly appropriates a fund or property to a person, will, in equity, be esteemed an assignment. Equity disregards mere form: *Bower* v. *Haddon Blue Stone Co.*, 30 N. J. Eq.

BANKRUPTCY. See *Errors and Appeals.*

BILLS AND NOTES.

Draft—Acceptance.—A telegram, agreeing to accept a person's draft for a certain sum, "for stock," is not a conditional contract, but an absolute undertaking to accept and pay the same, and a party discounting the draft on the faith of such telegram, is entitled to recover the amount of the party so agreeing to accept: *Coffman* v. *Campbell*, 87 Ill.

CITIZENSHIP. See *United States Courts.*

COLLISION. See *Negligence.*

CONSTITUTIONAL LAW.

Power of Congress over District of Columbia—Taxation—Confirmation of Proceedings otherwise void.—Under the Constitution, Congress has power to exercise exclusive legislation, in all cases whatsoever, over the District of Columbia, and this includes the power of taxation. Con-

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[2] From John Hooker, Esq., Reporter; to appear in 45 Connecticut Reports.

[3] From Hon. N. L. Freeman, Reporter; to appear in 87 Illinois Reports.

[4] From John H. Stewart, Esq., Reporter; to appear in 30 New Jersey Equity Reports.

[5] From E. L. DeWitt, Esq., Reporter; to appear in 32 Ohio St. Reports.

gress may legislate, within the district, respecting the people and property therein, as may the legislature of any state over any of its subordinate municipalities. It may, therefore, cure irregularities, and confirm proceedings which, without the confirmation, would be void, because unauthorized, provided such confirmation does not interfere with intervening rights: *Mattingly* v. *District of Columbia*, S. C. U. S., October Term 1878.

Police Powers of States—Railroads—Lighting Roads in Cities.—The power of police regulation throughout the state is vested in the legislature, and, in the exercise of this power, railway companies may constitutionally be required to light such portions of their railways as are within a city or incorporated village: *Cincinnati, Hamilton and Dayton Railroad Co.* v. *Sullivan*, 32 Ohio St.

The 32d chapter of the municipal code of 1869, which authorizes city and village councils, by ordinance, to require such lighting to be done by the owners of such railways, and on their failure to comply with such ordinance, authorizes the council to procure such lighting done at the expense of such owners, is not in conflict with the constitution of the state: *Id.*

When, on default of the railway company, such lighting is procured to be done by the council, the expense of such lighting may, by the council, be assessed or declared a lien upon any of the real estate of the railway company within the municipality: *Id.*

The liability of the railway company to pay such expense, can only be enforced by suit or action, or, in the language of the constitution, "by due course of law." It is not a *tax*, or an *assessment* in the nature of a tax for local improvements, and cannot therefore be summarily placed upon the county duplicate and collected as a tax or assessment proper: *Id.*

COURTS.

Power to amend their Records.—Courts always have jurisdiction over their records to make them conform to what was actually done at the time: *The City of Elizabeth et al.* v. *The American Nicholson Pavement Co.*, S. C. U. S., October Term 1878.

Power to appoint Arbitrators.—The power of a court of justice, with the consent of the parties, to appoint arbitrators and refer a case pending before it, is incident to all judicial administration, where the right exists to ascertain the facts as well as to pronounce the law. *Conventio facit legem.* In such an agreement there is nothing contrary to law or public policy: *Newcomb* v. *Wood*, S. C. U. S., October Term 1878.

DEBTOR AND CREDITOR. See *Husband and Wife.*

Voluntary Conveyance—Where void against Creditors.—As to debts existing at the time a voluntary conveyance is made, the law raises a conclusive presumption of fraud, but a subsequent creditor can only impeach such a conveyance by showing fraud in fact: *Claflin* v. *Mess*, 30 N. J. Eq.

A subsequent creditor may avoid a voluntary deed on the ground that it was made to defraud existing creditors, but, in order to do so, he must show debts still outstanding which existed when the deed alleged to be fraudulent was made: *Id.*

Payment by a grantor of all his debts existing at the time he makes a voluntary conveyance, repels the idea that he thereby intended to defraud his creditors: *Id.*

DEED. See *Equity.*

DOWER. See *Husband and Wife.*

DURESS.

Deed made under—Equity.—On a bill to set aside a transfer of property, alleged to have been obtained by duress, persons in whose favor certain charges on the lands thereby conveyed were made, are necessary parties: *Probasco* v. *Probasco*, 30 N. J. Eq.

A bill which alleges that a feeble old man has, without consideration, transferred to his children all of his property, amounting to $45,000, reserving to himself only an annuity of $1200, inadequately secured, and without any provision whatever for his wife in case she survive him: and that such transfer was obtained from him by want of comprehension on his part, and duress and false representations as to its effect on the part of his children, shows sufficient equity, and will, therefore, be sustained on general demurrer: *Id.*

EASEMENT.

Title by adverse User.—Title by adverse user rests upon the presumption of an actual grant which has been lost: *Lehigh Valley Railroad Co.* v. *McFarlan*, 30 N. J. Eq.

To raise the presumption of a grant where title to an easement is asserted, it must be shown that the use has extended over a period of twenty years, and has been for that period continuous and peaceable: *Id.*

Proof of acquiescence by the owner of the servient lands, in the exercise of the adverse right, is indispensable in proving title to an easement by adverse user: *Id.*

Where the user has been exercised by force, or by permission, or in the face of protests and in defiance of resistance, a grant cannot be presumed: *Id.*

Resistance by words is sufficient to prevent the presumption of a grant of an easement: *Id.*

EQUITY. See *Duress; Infant; Mortgage.*

Chancery Jurisdiction—Trust—Factor.—In case of the bailment of property to a factor in trust to sell, on his refusal to pay the proceeds to the person entitled to the same, a court of chancery has no jurisdiction to enforce the trust, there being a complete remedy at law in favor of the party entitled to the money; *Taylor* v. *Turner*, 87 Ill.

Bill of Peace—Preventing Multiplicity of Suits.—A bill of peace can only be maintained after the complainant has satisfactorily established his right at law, or where the persons who controvert it are so numerous as to render the intervention of this court necessary to save multiplicity of suits: *Lehigh Valley Railroad Co.* v. *McFarlan*, 30 N. J. Eq.

Where several plaintiffs bring different suits at law against one defendant, some for diminishing their supply of water, and another for

backing water on his mill-wheel, no ground for interference to prevent multiplicity of suits is shown, although the alleged injuries are done in the use by the defendant of one stream: *Id.*

Deed—Signing of Grantor's Name by Another—The application of the maxim, that he who asks equity must do equity, is not limited to any particular class of cases, but may be applied whenever it is necessary to the promotion of justice: *Mutual Benefit Life Ins. Co.* v *Brown*, 30 N. J. Eq.

At common law signing is not necessary to the due execution of a deed, but it is made so by the Statute of Frauds: *Id.*

But if the grantor's name is written in his presence and by his direction, it is his act, and he will not be permitted, in a court of equity, to repudiate a deed thus executed: *Id.*

Errors and Appeals.

When second Writs of Error or Appeals will lie.—Second appeals or writs of error, as the case may be, will lie in certain cases where *it is alleged* that the mandate of the appellate court has not been properly executed; but the appeal or writ of error, in such a case, will bring up nothing for re-examination except the proceedings subsequent to the mandate. Needful explanations may be derived from the original record, but the re-examination cannot extend to anything that was decided in the antecedent appeal or writ of error: *Stewart* v. *Salamon et al.*, S. C. U. S., October Term 1878.

Supervisory Jurisdiction of Circuit Court in Bankruptcy.—An appeal will not lie from the judgment of a Circuit Court in a proceeding by a creditor to prove his demand against the estate of a bankrupt: *Ingersoll* v. *Bourne et al.*, S. C. U. S., October Term 1878.

Evidence.

Release of Mutual Demands—Parol Evidence not admissible to show that certain Matters were not included.—H., in 1854, being embarrassed, intrusted certain property to N., to be sold, and after the payment of certain debts, the surplus to be returned to him. In 1862 the last portion of the property was sold to one B., and his note, payable to N., taken in payment. In 1868 H. and N. executed the following mutual release, under seal: "The undersigned, having had mutual dealings, in former days, have reviewed the same; and though there is justly due a balance from H. to N., yet, in consideration of love and affection and of one dollar, we each release to the other all obligations and demands whatsoever." At this time there remained unpaid the sum of $600 on the note of B., which was afterwards received by N. In assumpsit, brought by H. against N.'s executor, for the recovery of the money, it was held that proof was not admissible that, at the time the release was given, N. told H. that the money remaining unpaid on B.'s note should not be included in the release. Also, that evidence was not admissible that N., after the release and after receiving the $600, had admitted that the money belonged to H.: *Drake* v. *Starks, Executor*, 45 Conn.

Experts.—The opinion of experts in handwriting is evidence of low degree: *Mutual Benefit Life Ins. Co.* v. *Brown*, 30 N. J. Eq.

FACTOR. See *Equity.*

FORFEITURE.

Waiver of.—A bond, secured by a mortgage, provided that on default in the payment of the interest thereon for thirty days after the same had become due, the principal should, at the option of the obligee, become payable. *Held*, that after the obligee had ratified several parol extensions of the time for paying the interest, made by her agent, a subsequent similar extension would be deemed a waiver of the forfeiture, and a suit at law to enforce the bond on the ground of such forfeiture would be enjoined: *Bell* v. *Romaine*, 30 N. J. Eq.

FRAUD.

Liability of one Co-operating in.—A purchaser who co-operates with the vendor in the misappropriation of purchase-money, which he knows was raised for the benefit of a third person, renders himself liable to the person defrauded to the extent of the fund misapplied with his connivance: *Bower* v. *Haddon Blue Stone Co.*, 30 N. J. Eq.

GUARDIAN. See *Infant.*

HUSBAND AND WIFE.

Release of Inchoate Dower—Fraud on Creditors.—A release of the wife's inchoate right of dower is a valid consideration for a conveyance of property to her: *Singree* v. *Welch*, 32 Ohio St.

Such conveyance will not be held fraudulent and void as to the husband's creditors, unless the amount of consideration received is so disproportioned to the value of the wife's contingent dower as to be unreasonable: *Id.*

So great is the difficulty of estimating the worth of contingent dower rights, so uncertain and imaginary are the values which are the necessary elements of the computation, that the court will not pronounce the transaction fraudulent from the fact that the wife insisted upon and received a sum greater than her dower, if the facts do not show *mala fides* in her or her husband: *Id.*

Post-nuptial Contract.—A post-nuptial contract, made upon sufficient consideration, and wholly or partially executed, will be sustained in equity: *Kesner* v. *Trigg et al.*, S. C. U. S., October Term 1878.

INFANT.

Property Rights of Infant—Settlement on coming of Age—Trust—Equity.—It is the peculiar province of equity to take cognisance of transactions growing out of relations of trust, and to prevent those holding such positions from using them and their influence for their own aggrandizement: *Berkmeyer* v. *Kellerman*, 32 Ohio St.

All the power, influence and skill of one occupying such a relation is to be used for the advantage of the beneficial owner, and not for personal gain; and all increase, gains, and profits, whether arising from the natural increase in value of the property, or from the management of the trustee, are the absolute property of the beneficiary: *Id.*

One standing in the relation of a parent and guardian in fact of a minor, having the custody and control of such minor and of his property

during such minority, is bound to the most scrupulous good faith in the management of the estate, and where, on such minor's coming of age, he attempts to make a settlement of his trust with him, a court of equity will examine the transaction with extreme jealousy, to see that no undue influence has been exercised; that the parties have been put on an equal footing, by full disclosures; and that no advantage has been taken: *Id.*

Where a party occupying such a relation claims any benefit or advantage from a settlement with his ward, on his coming of age, of his trust transactions, the burden of proof is on him to show that he has made full disclosures; that he has exercised no undue influence; and that such settlement is fair and equitable: *Id.*

A conveyance by such minor, on the day he comes of age, of all his real estate to the persons occupying such relations, in execution of such a settlement made for such minor by others not authorized to bind it, and while he is still under their influence and control, and not advised of his rights, is not binding, and can only be upheld in a court of equity by clear proof that under all the circumstances it is just and equitable: *Id.*

JUDGMENT. See *Set-off.*

LACHES. See *Account; Mandamus.*

LIMITATIONS, STATUTE OF. See *Account; Mandamus.*

MANDAMUS.

Limitation in regard to issuing of—Laches.—The limitations of the code of civil procedure, as to the time of commencing civil actions, are applicable, as a bar, only to suits comprehended within the civil action of the code, which is a substitute for all such judicial proceedings as were previously known, either as actions at law or suits in equity, and does not embrace proceedings in mandamus: *Chinn* v. *Trustees, etc.*, 32 Ohio St.

There is, in Ohio, no statutory limitation as to the time within which a writ of mandamus may be obtained. Nevertheless, where the relator has, for an unreasonable time, slept upon his rights, the court may, in the exercise of sound discretion, upon the hearing of the case refuse to issue the writ: *Id.*

In determining what will constitute such unreasonable delay as to justify a refusal of the writ, regard may properly be had to circumstances which justify such delay, to the character of the case, and the nature of the relief demanded, and to the question whether the rights of the defendant, or of other persons, have been prejudiced by such delay: *Id.*

MORTGAGE. See *Forfeiture; Subrogation.*

Equity—Mistake in Deed making Conveyance subject to.—A mortgagee cannot avail himself of an assumption of a mortgage inserted in a deed of the premises by the mistake of a scrivener in copying the grantor's deed; neither of the parties to the deed intending or being aware of it: *Stevens Institute* v. *Sheridan*, 30 N. J. Eq.

Conveyance of Mortgaged Premises in Lots—Order of Liability.—Where the grantee of a mortgagor conveys the mortgaged premises in

different parcels, and the grantees of such parcels again convey them in parcels—*Held*, that the grantees of the latter parcels are liable to pay the share of the mortgage debt chargeable on the part of the mortgaged premises, of which the premises conveyed to them are part, in the inverse order of conveyance to them: *Hiles* v. *Coult*, 30 N. J. Eq.

MUNICIPAL CORPORATION. See *Constitutional Law.*

Trespass in removing supposed Encroachments on the Highway—Liability of Borough for Acts of its Officers.—The charter of a borough gave the warden and burgesses authority to order the removal of all encroachments upon any public highway of the borough, and upon the order not being obeyed, to cause them to be removed. The warden, acting officially and under a vote passed by the warden and burgesses, caused a fence of the plaintiff along the line of the highway, to be removed, the plaintiff not obeying an order previously made for its removal. The fence was in good faith supposed, by the warden and burgesses, to be an encroachment, but was not so in fact. In an action of trespass brought against the borough, it was *held* (two judges dissenting): 1. That the grant of power, though to the warden and burgesses, was in reality to the borough. 2 That the power to remove encroachments was a power asked for and obtained by the borough for its own advantage, and not for the benefit of the public. 3. That, in the removal of encroachments, it was therefore exercising a privilege, not discharging a governmental duty. 4. That the borough was liable for the acts of the warden: *Weed* v. *Borough of Greenwich*, 45 Conn.

NATIONAL BANK.

Loans on Real Estate.—The banking law of the United States prohibits national banks from loaning money on real-estate security. They are limited to loans on personal security. Therefore, a mortgage given to an officer of such a bank, at the time of a loan by the bank, to secure its payment, being in effect the same as if made to the bank, is void, and will not be enforced by the courts: *Findley* v *Bowen*, 87 Ill.

NAVIGABLE STREAM. See *Negligence.*

NEGLIGENCE.

Navigable Stream— Vessel anchored without Light—Pilot.—The bridge over the Ohio river at Parkersburg, being authorized by a law of Congress, the obstruction of navigation at that point, so far as it was reasonable and necessary to the construction of the work, was justified: *Baltimore and Ohio Railroad Co.* v. *Wheeling, Parkersburg and Cincinnati Transportation Co.*, 32 Ohio St.

In considering the rights of navigation, they must be viewed as limited by those rights which have been conferred upon the bridge company by the law authorizing the structure in question: *Id.*

What might be negligence in leaving a barge unguarded in a navigable part of the river, is not necessarily negligence if it is so left under circumstances fairly justified by the necessities or convenience of those engaged in the erection of the bridge: *Id.*

Although prudence dictates that a vessel, left during the night in the usual route of passing craft, should display a light as a signal of warning

to others, yet, when such vessel is moored out of the usual path of navigation, where boats rarely if ever come, and in a place where the bridge work was going on from day to day, such work at times necessitating a temporary closing of the passage-way altogether, the absence of a light upon a vessel so circumstanced is not necessarily negligence: *Id.*

Before such alleged negligence can become the foundation of a right to recover damages, it must appear to have been the proximate cause of the injury occasioning such damages: *Id.*

When a pilot leaves the usual and customary channel of navigation, that fact requires an increased amount of care on his part to avoid the danger attending the new risks he undertakes. If, in pursuing such a course, he encounters a collision, it is not a sufficient justification for him to show that he exercised that ordinary care proper in the usual and ordinary course of navigation: *Id.*

Approaching places of danger, such as the piers of a bridge, during the night-time, a lookout is indispensable upon a steamboat. An omission in this regard is such negligence as will prevent a recovery, unless it clearly appears that a lookout could not, by any possibility, have prevented disaster: *Id.*

A pilot having mistaken his course, and not knowing where his boat is, who attempts the dangerous passage of a bridge at night, at the highest rate of speed and without any lookout, is guilty of negligence. And if, under such circumstances, he collides with a barge moored to a bridge pier, which is out of the usual channel of navigation, and by the collision his own boat is lost, the owners of the boat cannot recover, although the barge was without a light: *Id.*

Office and Officer.

Abolition of Office by repeal of Law creating it.—The legislature has power to repeal a statute under which an incumbent of an office has been appointed to and holds the office for a term not yet expired; and the office expires with the repeal of the statute: *State ex rel. Birdsey* v. *Baldwin*, 45 Conn.

Partnership. See *Account.*

Notice by Dormant Partner.—The duty of a retiring dormant partner to give notice of the dissolution of the partnership, is a duty which he owes to those who before that time had some knowledge of his connection with the firm. To strangers, having no such knowledge, he owes no such duty. As to them, he can only be charged as a partner, when in fact he was not, by showing that he, in some way, misled them, as that he held himself out to the world as such, or that he so held himself out to them: *Nussbaumer* v. *Becker*, 87 Ills.

Money Lent to one Partner—Surety.—Where a partner borrows money on the credit of his individual note, which is signed also by a surety, such borrowing does not create a partnership debt, though the money be applied to partnership purposes; and the principal of such surety is the individual partner, with whom he joins in the execution of the note, and not the partners generally: *Peterson* v. *Roach*, 32 Ohio St.

Possession.

Notice of Title.—The principle that the possession of land is notice

to others of the possessor's title, is intended to protect only equitable rights, and not to cover the possessor's fraud, or to protect him where he is without equity: *Groton Savings Bank* v. *Batty*, 30 N. J. Eq.

As against an innocent mortagee, notice from the possession of lands cannot be set up by an occupant who was insolvent when he placed the title in the name of the mortgagor, and knew, soon after the time of the giving of the first of the two mortgages, that it had been given, and did not notify the mortgagee of his claims, but kept silent and permitted the mortgagor to borrow more money of the mortagee on a second mortgage of the property, whereas if he had notified the mortgagee of his claim when he first was made aware of the existence of the first mortgage, the mortgagee might have collected the mortgage debt of the mortgagor, and would have not made the second loan on security of the mortgaged premises: *Id.*

RAILROAD. See *Constitutional Law; Specific Performance.*

Maintenance of Order on Train—Duties of Conductor.—It is not only the right of a conductor to expel from a train a drunken, unruly, boisterous passenger, but when such a person endangers by his acts the lives of people, it is the duty of such conductor to remove such passenger in order to protect others from violence and danger: *Railway Co.* v. *Valleley*, 32 Ohio St.

But this right must be reasonably exercised, and not so as to inflict wanton or unnecessary injury upon the offending passenger, nor so as to needlessly place him in circumstances of unusual peril: *Id.*

If having exercised reasonable prudence, considering the time, place, and circumstances, as also the condition of the drunken man himself, the conductor expels such passenger, who is afterward run over and killed by another train not in fault, the expulsion itself is not such proximate cause of the death as will make the company liable; *Id.*

SET-OFF.

Assignment of Judgment.—The assignee of a judgment taking without notice that the judgment debtor has any equitable right to have an unsettled demand set off against it will be protected. Notice that the judgment-debtor has a demand against the plaintiff in the judgment is not any ground for allowing a set off to defeat the equitable right of the assignee: *Ullman* v. *Kline*, 87 Ills.

SPECIFIC PERFORMANCE.

Agreement to Cancel or Rescind Sale on Failure of Certain Conditions.—If a party in selling real estate in a city guarantees that a certain street will be extended and opened through the property within two years, and agrees that if such street is not opened within that time, on a re-conveyance by the purchaser, to refund the money paid for the same, with ten per cent. interest, a court of equity will specifically enforce the contract against the vendor on a tender of a proper deed to him: *Kerfoot* v. *Breckenridge*, 87 Ills.

Contract to build Railroad.—Specific performance was refused of a contract to build and equip a railroad, although the contract price was to be paid in the stock and bonds of the company, and the estimates, &c., were to be made by the company. The company declared its inability to comply with the requirements of a supplement to the act (a general law)

under which it was incorporated, and the penalty for non-compliance therewith was, by the supplement, declared to be the forfeiture of its charter. It therefore, and merely for that reason, declined to proceed further under the contract: *Danforth* v. *Philadelphia & Cape May Railway Co.*, 30 N. J. Eq.

The court refused to consider the constitutionality of such supplement, so far as the defendants were concerned, and also refused to direct them to make estimates for the work already done under the contract: *Id.*

Subrogation.

Mortgagee—Payment of Taxes—Subrogation against second Mortgagee.—The holder of a first mortgage discovering, during foreclosure, that certain taxes were a lien on the premises, paramount to all encumbrances, entered into an agreement, through his solicitor, with the solicitor of a second mortgagee, that if he, the first mortgagee, would pay the taxes, and the second mortgagee should buy the premises at the foreclosure sale, he should be repaid by the second mortgagee. After such payment, sale and purchase, the second mortgagee refused to refund the amount of the taxes: *Held*, that the first mortgagee could not be subrogated to the original lien of the township for the taxes, and have the amount paid by him decreed a lien on the lands: *Manning* v. *Tuthill*, 30 N. J. Eq.

Surety. See *Partnership.*

Trespass. See *Municipal Corporation.*

Trust. See *Equity; Infant.*

United States Courts. See *Errors and Appeals.*

Jurisdiction—Citizenship of Parties—Residence not equivalent to Citizenship.—In cases where the jurisdiction of the federal courts depends upon the citizenship of the parties, the facts, essential to support that jurisdiction, must appear somewhere in the record: *Robertson* v. *Cease*, S. C. U. S., Oct. Term 1878.

They need not necessarily be averred in the pleadings. It is sufficient if they are in some form affirmatively shown by the record: *Id.*

The record in such cases includes only such portions of the transcript as properly constitute the record upon which the court must base its final judgment, and not papers which have been improperly inserted in the transcript: *Id.*

Citizenship and residence are not synonymous terms: *Id.*

There is nothing either in the language or policy of the 14th amendment to the constitution to support the position that the bare averment of the residence of the parties is sufficient, *prima facie*, to show jurisdiction: *Id.*

Usury.

Taken notice of by Court of Equity.—Althongh, by the terms imposed upon a defendant who is let in to answer, he is prevented from setting up usury, yet, if usury be proved, the complainant will be allowed to recover only the amount equitably due upon his mortgage: *Powers* v. *Chaplain*, 30 N. J. Eq.

Vendor and Vendee.

When Purchase-Money may be recovered back.—Where a party gave a bond for a warranty deed to real estate, to be made on a certain day, if the purchase-money should then be paid, it was *held*, that the making of the deed and the payment of the money were concurrent acts; and where the vendor of the land is not able to make the title he agreed to give, at the time agreed upon, and the purchaser is ready and willing and able to make his payment, the latter may sue for and recover back what he has paid on the contract: *Clark* v. *Weis*, 87 Ills.

Waters and Watercourses

Jurisdiction of Equity to settle conflicting Rights to use of Streams.—Equity has jurisdiction (and for that purpose may enjoin the further prosecution of suits at law) in a case which involves the relative rights, under their charters, of two corporations to the use of the waters of the same stream or streams; and such jurisdiction exists on the ground of both public and private necessity. In such cases, equity is not only the appropriate forum, but the only one where adequate relief in the premises can be administered: *Lehigh Valley Railroad Co.* v. *Society for Establishing Useful Manufactures*, 30 N. J. Eq.

Will.

Undue Influence—Inference from Circumstances without Direct Evidence.—Where a testator, leaving an estate of $14,000, with no family, made a will five days before his death and while suffering from severe disease, by which, after giving two of his brothers $1000 each, $1000 to certain other relatives, and $1000 to a friend, he gave the residue of his estate to a church in the town where he lived; and it appeared that the will was drawn by H., who was a vestryman of the church and who was the only person who conversed with him on the subject, and who was also made sole executor; that three brothers and a sister of the testator lived within a few miles of him and were not notified of his being dangerously ill until shortly before his death and after the will was executed; that H. was deeply interested in the welfare of the church and a liberal contributor to its support; that he and another vestryman were two of the witnesses to the will and a brother-in-law of H. the third witness; and that the will described certain half nephews and a half niece of the testator as his brothers and sister—it was *held*, that the circumstances were such as to create a suspicion of undue influence, which might be considered by the jury without any direct proof of such influence, and to require explanation on the part of the persons propounding the will. *Drake and others' Appeal*, 45 Conn.

Quære: Whether the vestrymen were competent witnesses to the will.

Codicil—Revocation.—Where a testator by a codicil revokes a devise or legacy, and grounds such revocation on the assumption of a fact which proves not to exist, the revocation is regarded as contingent upon the existence of such fact and does not take effect: *Dunham* v. *Averill*, 45 Conn.

But the courts will not set aside such a revocation where it does not appear by the will itself that it was made under the belief of the existence of such fact: *Id.*